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ABSTRACT

The detention of juveniles in adult jails and lockups has long been a moral issue characterized by sporadic public concern and minimal action towards its resolution. Approximately 500,000 or more juveniles are held in jails each year. Rationales for keeping children in jails have included public safety, protection of children from themselves or their environment, and a lack of alternatives. A survey of 10 states found that most detained juveniles would not meet standard detention criteria of the Juvenile Justice National Advisory Committee. Children are hurt physically, sexually, and emotionally in jail. Exposing a child to the punitive conditions of a jail jeopardizes his well-being and handicaps future rehabilitation efforts. Virtually every national organization concerned with law enforcement and the judicial system has recommended standards prohibiting jailing of children. Although there has been an increase in the states' prohibitions against confinement of juveniles in adult jails, only four states absolutely prohibit it. Costs for placing juveniles in facilities other than jails are estimated to be 15% higher than costs for jailing children without separation. However, recidivism rates are higher for children placed in jails and thus entail higher future costs. Police departments should review their procedures to ensure juveniles are not subject to unwarranted detention and jailing. (ABL)

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POLICE ROLE IN REMOVING JUVENILES FROM ADULT JAILS

Prepared for

The Office of Juvenile Justice
and Delinquency Prevention

U.S. Department of Justice

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The detention of juveniles in adult jails and lockups has long been a moral issue in this country which has been characterized by sporadic public concern and minimal action toward its resolution. Until recently, there was little information available about the jailed population of juveniles. The public was unaware of the dimensions of the problem; and, therefore, there was little stimulus for public officials to take action and end this inhumane practice.

Not until 1971, with the completion of the National Jail Census, did a clear picture of jails surface. By its own admission, the census showed only a snapshot of American jails and the people who were incarcerated in them by revealing that on a single day in 1970, there were 7,800 juveniles living in 4,037 jails. Significantly, it excluded those facilities holding persons less than forty-eight hours. This is critical with respect to juveniles because it is the police lockup and the drunk tank to which alleged juvenile offenders are so often relegated pending court appearance.

In August of 1980, the Community Research Center of the University of Illinois estimated that over 479,000 juveniles are held in 8,833 adult jails and lockups each year. This includes 213,647 held in county jails and 266,261 held in municipal lockups. The Children's Defense Fund states that even the half-million figure is "grossly underestimated" and that "there is an appalling vacuum of information...when it comes to children in jails." Regardless of the true figure, it is clear that the practice of jailing juveniles has not diminished during the last decade.

RATIONALES

Many rationales have been used to justify keeping children in jails: rationales such as public safety, protection of children from themselves or their environments, or lack of alternatives. But these rationales break down under close scrutiny.

In most States, the criteria for secure detention of juveniles are that they are "likely to run, likely to commit new offenses, or likely to harm themselves." This concept of "likely to" has been denounced as vague and subjective by the American Bar Association, National Advisory Committee for Juvenile Justice and Delinquency Prevention, and others. Many organizations as well as nationally developed standards endorse the use of specific criteria, such as type of offense, legal history, and legal status, to determine whether to securely detain a juvenile.

The Community Research Center surveyed juvenile court data in ten States in 1978-1979, and found that fifty-five percent of the children detained in juvenile detention centers and adult jails would not meet the minimum standards

for secure detention according to the standard detention criteria established by the Juvenile Justice National Advisory Committee, and that these children could be safely released to nonsecure settings.

EMOTIONAL AND PHYSICAL HURT

But whether or not cities and counties believe they can rationalize the placement of their children in jails and lockups, their reasons will not likely be more important than the fact that children in jails get hurt--both emotionally and physically.

The most widely known harm is that of physical and sexual abuse by adults in the same facility. The documented cases of assault and rape of juveniles in jails are common. Even short-term pretrial or relocation detention in an adult jail exposes male and female juveniles to sexual assault and exploitation and physical injury.

Sometimes, in an attempt to protect a child from attack by adult detainees, local officials will isolate the child from contact with others. This also has been shown to be harmful to the child. Dr. Joseph R. Noshpitz, past president of the American Association for Children's Residential Centers and secretary of the American Academy of Child Psychiatry, testified in Lollis v. New York State Department of Social Services that placing juveniles in jails often causes them serious emotional distress and even illness:

> In my opinion, extended isolation of a youngster exposes him to conditions equivalent to 'sensory deprivation.' This is a state of affairs which will cause a normal adult to begin experiencing psychotic-like symptoms, and will push a troubled person in the direction of serious emotional illness.
>
> What is true in this case for adults is of even greater concern with children and adolescents. Youngsters are in general more vulnerable to emotional pressure than mature adults; isolation is a condition of extraordinarily severe psychic stress; the resultant impact on the mental health of the individual exposed to such stress will always be serious, and can occasionally be disastrous.

Having been built for adults who have committed criminal acts, jails do not provide an environment suitable for the care and keeping of delinquents or status offenders. The hardware, policy, and procedures are all geared to the most dangerous incarcerated adult offender or the offender who could potentially be incarcerated under the criminal justice system. The confinement of juveniles in adult jails and lockups relegates them to the woefully inadequate basic services which have become the hallmark of these facilities. The documented lack of crisis counseling, medical services, and recreational areas for indoor and outdoor exercise is particularly critical when viewed in context

with the special needs of young people. Nowhere is this situation more acute than in the area of medical services where only ten percent of the county jails maintain a level of service beyond a first aid kit.

Those who jail children do not take into account children's perception of time and space or their naivete regarding the purpose and duration of this stay in a locked facility. The lack of sensory stimuli, extended periods of absolute silence or outbreaks of hostility, foul odors and public commodes, and inactivity and empty time can be an intolerable environment for a child.

Research findings concerning the suicide rate among children who are placed in adult jails indicate that juveniles who are incarcerated in jails commit suicide at a rate that is seven times greater than that of juveniles in secure juvenile detention facilities.

For the juvenile offenders who are jailed with adults, their terms of detention expose them to a society which encourages delinquent behavior, even giving them sophisticated criminal techniques and contacts. High recidivism rates dispel the belief that the unpleasant experience of incarceration will have a deterrent effect on the child's future delinquent acts. To the contrary, jails may serve to promote rather than to discourage misbehavior by children. A study by the American Justice Institute shows that jails have the highest recidivism rate of any type of juvenile care. Of those children jailed, eighty-six percent reappear in court on new offenses as opposed to a forty-nine percent reappearance rate for those placed in foster care.

Additionally, incarceration in a jail carries with it a degree of criminal stigma. A community seldom has higher regard for those incarcerated in a jail than it does for the jail itself. This is especially handicapping to a youth from a rural or less sophisticated community with a small population.

Thus, the impact of jailing juveniles is directly in conflict with the purpose of the juvenile justice system which was expressly created to remove children from the punitive forces of the criminal justice system. Exposing a girl or boy to the punitive conditions of a jail immediately jeopardizes his or her emotional and physical well-being and handicaps future rehabilitation efforts.

COURT'S RECOGNITION OF PROBLEM

In recent years, there has been a growing recognition by courts and commentators that individuals involuntarily committed to institutions for treatment have the "right" to such treatment, and conversely, that individuals so committed who do not in fact receive treatment thereby suffer a violation of that right. In 1966, the United States Court of Appeals for the District of Columbia Circuit became the first Federal court to recognize the right to treatment as a basis for releasing an involuntarily committed individual. The court listed several ways in which confinement without treatment might violate constitutional

standards. For example, where commitment is made without procedural safeguards, such commitment may violate the individual's right to procedural due process. Indefinite confinement without treatment of one found not criminally responsible may be so inhumane as to constitute "cruel and unusual punishment."

The United States Supreme Court has never squarely ruled on whether there is a constitutionally based right to treatment. In Kent v. United States, the Court commented on the plight of children in the juvenile justice system:

> There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds; that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.

Later, in In re Gault, the Court reiterates the view of Kent that juvenile justice procedures need not meet the constitutional requirements of adult criminal trials, but must provide essential "due process and fair treatment."

Several courts have found a constitutional basis for the right to treatment in the Eighth Amendment's prohibition on cruel and unusual punishment. Still other courts have based the right to treatment on the principle that curtailment of fundamental liberties through involuntary confinement must follow the "least restrictive alternative" available. Under this rationale, a jurisdiction violates the individual's constitutional rights if it fails to confine and provide treatment in the least restrictive setting possible.

The procedural due process rationale has specifically been used to declare that confinement of children in jails violates the children's constitutional rights. A class action suit was brought by parents of two boys who were confined in Jefferson County Jail, Kentucky, for four days and four weeks respectively, against the sheriff, jail warden, and four juvenile court judges. The action was brought on behalf of the two boys and fifty-eight other boys who had been confined in the jail during 1971. After hearing the expert testimony on the effects on juveniles of placement in the jail, and after personally visiting the jail, the court ruled as follows:

> The Court is of the opinion that the present system used by the Juvenile Court Judge and his Trial Commissioners of selective placement of forty-five juveniles in the Jefferson County Jail in predispositional matters and of fifteen juveniles as a dispositional matter, even though these commitments be for limited periods of time, constitutes a violation of the Fourteenth Amendment in that it is treating for punitive purposes the juveniles as adults and yet not according them for due process purposes the rights accorded to adults. No matter how well intentioned the Juvenile Court Judges' acts are in this respect, they cannot be upheld where they constitute a violation of the Fourteenth Amendment.

COMMISSIONS' RECOGNITION OF PROBLEM

A study undertaken by the Juvenile Justice Legal Advocacy Project (JJLAP) and funded by the Office of Juvenile Justice and Delinquency Prevention addresses the issues and litigation regarding injuries suffered by children in jails. The JJLAP reports that virtually every national organization concerned with law enforcement and the judicial system--including the National Council on Crime and Delinquency, the American Bar Association and Institute for Judicial Administration, the National Advisory Commission on Law Enforcement, and the National Sheriffs' Association--has recommended or mandated standards which prohibit the jailing of children. This near unanimous censure of jailing children is based on the conclusion that the practice harms the very persons that the juvenile justice system is designed to protect and assist.

Leading national organizations have worked together to address jail reform and adopted position statements regarding areas of inappropriate confinement in adult jails and lockups. On April 25, 1979, the National Coalition for Jail Reform (NCJR) adopted, by consensus, the position that no person under the age of eighteen should be held in an adult jail. The coalition believes that confinement in an adult jail of any child is an undesirable practice. The diversity of the twenty-eight organizations that belong to the NCJR underscores the significance and strength of this position among these groups. Represented on the NCJR are the American Correctional Association, the National Sheriff's Association, the National Association of Counties, the National League of Cities, the National Association of Blacks in Criminal Justice, and the American Civil Liberties Union.

In 1974, the National Assessment of Juvenile Corrections assumed and defended the position that "placing juveniles in adult jails and lock-ups should be entirely eliminated." Similarly, the Children's Defense Fund advocated, "To achieve the goal of ending jail incarceration of children, states should review their laws to prohibit absolutely the holding of children of juvenile court age in jails or lock-ups used for adult offenders."

As early as 1961, the National Council on Crime and Delinquency stated that:

> The answer to the problem is to be found neither in 'writing off' the sophisticated youth by jailing him or in building separate and better designed juvenile quarters in jails and police lock-ups. The treatment of youthful offenders must be divorced from the jail and other expensive 'money saving' methods of handling adults.

The President's Commission on Law Enforcement and Administration of Justice established that "adequate and appropriate, separate detention facilities for juveniles should be provided." Subsequent national standards in the area of juvenile justice and delinquency prevention reaffirmed this position. The National Advisory Commission on Criminal Justice Standards and Goals states that "jails should not be used for the detention of juveniles." The American

Bar Association and the Institute for Judicial Administration stated that "the interim detention of accused juveniles in any facility or part thereof also used to detain adults is prohibited." The National Sheriff's Association stated that, "in the case of juveniles when jail detention cannot possibly be avoided, it is the responsibility of the jail to provide full segregation from adult inmates, constant supervision, a well-balanced diet, and a constructive program of wholesome activities. The detention period should be kept to a minimum, and every effort made to expedite the disposition of the juvenile's case."

STATE AND LOCAL POSITION

Although there has been an increase in the number of State legislatures which have enacted prohibitions against the confinement of juveniles in adult jails and lockups, only four States have legislation which absolutely prohibits jailing juveniles. Ten States permit detention of juveniles in jails, regardless of age or circumstance, while all others permit detention of juveniles in adult jails/lockups, when certain criteria are met. Many States require their jails and lockups to provide adequate separation of incarcerated juveniles from the adult inmates.

While separation requirements are laudatory, the fact is that the separation of juveniles and adult offenders in most of the nation's jails and lockups is not only impractical from a cost standpoint, but often architecturally impossible. Modification of these facilities to bring them into line with the minimum standards for separation of juveniles from adults would necessitate a large increase in operating costs in order to undertake renovation. As a rule of thumb, according to estimates of the American Justice Institute (AJI) and the Community Research Center, the cost of renovating county jails and municipal lockups to provide "sight and sound" separation with provision of adequate living conditions for all those persons jailed is equal to or slightly more expensive than the cost of construction of new secure juvenile facilities.

Yet many public officials still maintain--and probably believe--that renovation of jails and lockups to meet minimum standards is more practical and cost-effective than elimination of the practice of jailing juveniles. Quite often, they claim that removing juveniles from adult jails and lockups will not decrease the operating cost of the facilities, as their daily cost of running the facility will remain nearly the same. In addition, they say their jurisdictions do not have enough secure juvenile detention facilities to accommodate their jailed population of children.

However, one only has to look at the data that show the types of offenses for which children are being jailed to see that most of these children do not require secure confinement. Their offenses are not generally serious enough to warrant secure confinement in order to protect society.

Based upon information from the 1977 Massachusetts Task Force on Secure Facilities, the National Council on Crime and Delinquency, the U.S. Children's Bureau, and the National Center for Juvenile Justice, it is estimated that only ten percent of those persons under eighteen alleged to have committed an offense would require secure detention prior to adjudication.

The Children's Defense Fund visited 449 jails and lockups in a nine-State area in 1976 and found that, of the total number of children held in those jails on the day visited, 43.4 percent were under the age of fifteen. This survey also found that only 11.7 percent of the children found in jail were charged with serious offenses against persons. The rest, 88.3 percent, were charged with property or other minor offenses. Of the 88.3 percent, 17.9 percent of the jailed children had committed only "status offenses." An additional 4.3 percent had committed no offense at all.

Looking at the Children's Defense Fund statistics, one can see that approximately 11.7 percent of the children found in jail were charged with serious offenses against persons. It is logical to assume that these children require secure detention. The remaining percentage, 88.3 percent, is made up of children who have committed property and other minor offenses (66.1 percent) and status and nonoffenses (22.2 percent), all of whom could be detained in alternative, nonsecure settings.

COSTS OF JAILING JUVENILES

The 1980 amendments to the Juvenile Justice and Delinquency Prevention Act (JJDPA) dealt with the problems associated with detaining children in jails and lockups by requiring each State participating in the JJPDA Formula Grant Program to plan for and ultimately achieve complete removal of all children from such facilities. If, in trying to carry out this requirement, States attempted to build new secure facilities for these juveniles, the costs would be staggering. However, such a response is not necessary.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has analyzed the relative cost of detaining juveniles in jails, with and without appropriate separation from adults, and that of total removal of juveniles from jails and lockups.

In August of 1980, the Community Research Center of the University of Illinois estimated that, in 1978, there were approximately 479,908 persons under the age of eighteen in adult jails and lockups. The average daily cost of holding these children in such facilities, according to the estimates of the American Justice Institute, is $24.00 per day, with an average length of stay per child of six days. The annual cost of holding these juveniles would therefore have been approximately $69,106,752.00.

The American Justice Institute has developed a formula for determining "per day" jailing costs if all children being held were provided adequate sight

and sound separation from adults being held in these facilities. This formula incorporates an average cost of $41,500.00 per bed for renovation/construction amortized over a five-year period. These renovation/construction costs add approximately $23.00 each day to the regular daily per diem rate for jail. Using this new per diem rate of $47.00, the annual cost for continuing to jail 479,908 annually, as well as providing separation for that 50 percent of the population of juveniles now being held in regular contact with adults, is calculated to be $102,220,404.00.

The OJJDP's calculations of the per diem costs of jail removal assume that 88.3 percent of the 479,908 children in jail can be removed to nonsecure settings and that one-half of this 88.3 percent can be placed in home detention (per estimates of the Community Research Center). It is further assumed that the 11.7 percent who require some form of secure care can be placed in already existing juvenile detention facilities either by filling vacancies provided by the removal of status and nonoffenders from secure juvenile detention facilities or by transportation to the closest available secure setting. It should be noted that the American Justice Institute and others have used a 90 percent nonsecure/10 percent secure placement breakdown in calculating relative costs of jail removal. Thus our calculation, based on 88.3 percent nonsecure placement/11.7 percent secure placement, produces a more conservative estimate of cost savings.

While the average length of stay of juveniles in jails and nonsecure settings is six days, the average length of stay for juveniles placed in secure juvenile detention facilities is twelve days. Also significant is the fact that the average per diem rate for secure juvenile detention facilities is $61.00, compared to $14.00 for home detention, $18.00 for group homes, and $24.00 for jails. The fact that approximately 11.7 percent of the children removed from jail would likely be placed in secure detention facilities could bring the total annual operating cost for detaining juveniles in facilities other than jails to $81,781,920.00, which is fifteen percent higher than the cost of jailing children without separation.

OTHER COSTS--RECIDIVISM

However, mere "per diem," or operating costs, are only one aspect of what it costs citizens to detain juveniles. Recidivism rates, which are the rates of rearrest of juveniles for new offenses, are higher for children detained in jails than for any other type of juvenile care. It would be easy to assume that children placed in jails are more serious offenders or have more extensive prior records than children placed in other secure or nonsecure settings, thus making higher recidivism rate more likely. However, that rationale does not hold up. As has already been noted, approximately 88.3 percent of the children found in jails and lockups are there for property or other minor offenses; 43.3 percent of the children found in jails have no known prior court contacts. Perhaps, then, a better explanation for the high recidivism rates which jails

produce is that jails have a negative impact upon the self-esteem and the law-abiding instincts of children.

It is important that the recidivism rates of jails and other placement options be included in a calculation of the relative costs of jail removal, for these rates have an impact upon the future cost to society that this jailed population of 479,908 children incur. High recidivism rates mean high future costs not only in terms of the per day cost of detention but also in terms of the direct, out-of-pocket costs to citizens that these future crimes levy.

When recidivism factors are included in cost calculations of all three types of policy alternatives for dealing with the problems associated with children in jails, complete removal is the most cost-effective approach.

Our determination of the total cost of jailing and unjailing children includes not only daily operating costs, but also the additional costs which will be incurred as a result of probable instances of recidivism. These calculations are based upon average recidivism rates per each placement option as well as the average direct out-of-pocket costs to citizens by type of offense. Both the average recidivism rates and the average direct costs of various types of juvenile crime which are used in these calculations have been established by AJI.

These calculations product the following annual detention costs plus additional direct costs for three types of detention policies:

Current practice of jailing children without complete separation	$1,141,618,627.00
Jailing children with complete separation	$1,203,210,019.00
Removing all children from jails	$1,020,962,754.00

These figures show that jail removal is not the most costly way of addressing the harmful effects of detaining children in jails. In fact, jail removal can be expected to save taxpayers nearly $121 million every two years over the current jailing practice.

POLICE ROLE

The jailing of children is harmful to both children and society. It imposes costly human and economic waste. The high suicide and recidivism rates produced by jails provide sufficient evidence. But even though the jailing of children is an obvious and disturbing problem, it is not an easy one to solve. Statutory changes are required in many States. In other States, where laws have been enacted prohibiting the placement of juveniles in jails, the law needs to be upheld in practice. This requires constant vigilance by court

personnel, police, and citizens. Each has a role to play and must actively share the responsibility of finding other, more suitable, placements for children.

Police are most often the first contacts that juveniles have with the system. An arresting officer is a major determinant of the type of charge that is filed, whether or not a juvenile is detained, and the type of detention facility in which the juvenile is placed.

Police departments should review their administrative procedures and revise them when necessary to insure that juveniles are not subjected to unwarranted detention and jailing. Except in those cases where specific and objective detention criteria are met, efforts to avoid the formal processing and detention of children should be supported. Such a policy spares children from needless damage and allows the system to focus its limited resources on those juveniles who have committed serious offenses and pose a threat to society.

Police departments can be advocates for the rights of children. The police officer is keenly aware when his or her jurisdiction lacks sufficient placement options which provide alternatives to jail. Departments should be active in identifying placement needs and work collaboratively with public and private agencies to see that they are established. Police can also work with the courts to maintain a system of 24-hour intake so that they are not faced with the need to detain children in jails pending the availability of court personnel.

Let's face it. Children in jails and lockups present enormous operational problems for the administrators of these facilities. Police departments that do not want children in their jails must let that fact be known. More attention needs to be focused on the harmful effects of jailing children. When the public is not aware of the tragedies that jailed children suffer, public clamor and support for jail reform cannot be expected.

The OJJDP has given the removal of children from adult jails and lockups a high priority because of the urgent need to find more suitable and safe placements for children. The Office provides both financial and planning assistance to any State or local jurisdiction that requests it. Reform of detention practices is not the sole responsibility of the courts. The police have a major role to play and can have a significant impact upon the futures of our nation's children.